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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1475th MEETING

Held at Headquarters, New York,
on Monday, 18 March 1996, at 3 p.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 3.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Lists of issues to be taken up in connection with the consideration of reports submitted by States Parties under article 40 of the Covenant (continued)

Initial report of Guatemala (continued) (CCPR/C/81/Add.7)

Issue (h)

1. Ms. MEDINA QUIROGA said that, while the report of Guatemala acknowledged the existence of the internal armed conflict, it acknowledged that the Government had not made use of article 138 of the Constitution under which it could declare a state of emergency. She suggested, therefore, that the wording of the question should be amended to reflect that situation: "Taking into consideration paragraphs 39 and 46 of the report, please explain if normal peace-time law is being applied in situations of internal armed conflict and if not, please explain what special legislation is being applied. Please explain the status accorded to the rights enumerated in article 4, paragraph 2, of the Covenant when article 138 of the Constitution is invoked and whether it allows those rights to be suspended."

2. Issue (h), as orally amended, was adopted.

Issue (i)

3. Mr. BÁN said that the question appeared to be limited to recent human rights violations committed during the term of office of the current Government, but he was also curious about government policy on investigating and punishing past human rights violations.

4. Mr. BRUNI CELLI said that the prevailing climate of impunity in Guatemala made it difficult to enforce existing laws. In his view, the question should be oriented towards the concrete measures taken to investigate the specific cases reported. It could be divided into two parts: the first part would deal with the specific cases mentioned in paragraphs 32 to 38 of the report; the second part, with general government policy.

5. The CHAIRMAN noted that although the current Government had been in office only a few months, a major change had already occurred in its discourse. In his view, the Committee needed to know what had taken place since the ratification of the Covenant.

6. Mr. BUERGENTHAL, supported by Mr. BHAGWATI, said that in the third line, the words "and punish" should be inserted after "investigate".

7. Ms. MEDINA QUIROGA said that the reference to punishment should be introduced towards the end of the list, after "to bring those found responsible before the courts".

8. Mrs. CHANET agreed that such a change would recognize the presumption of innocence.

9. Issue (i), as orally amended, was adopted.

Issue (j)

10. Ms. MEDINA QUIROGA said that in obtaining a confession or testimony the Committee should seek to identify who bore the burden of proof that torture had been used.

11. Ms. EVATT said that the word "used" should be replaced by "admitted" in the first line.

12. Mr. KLEIN said that the admission of testimony obtained under torture and the burden of proof were different issues and should be addressed separately.

13. Issue (j), as orally amended, was adopted.

Issue (k)

14. Mr. BRUNI CELLI said that human rights activists should be added to the list of those facing obstacles in the performance of their duties.

15. Ms. MEDINA QUIROGA said that the reference to paragraph 43 of the report did not appear to be relevant and should be deleted. Furthermore, the nature of the obstacles faced should be spelled out.

16. Mrs. CHANET said that taking into account the problems raised in paragraph 43, the Government should be asked what specific measures had been taken to avoid the obstacles to which reference was made.

17. Lord COLVILLE said that, since obstacles were raised by a number of different factions, it might be useful if the Government of Guatemala could explain some of them more fully.

18. Mrs. CHANET said that the Committee could also ask what specific measures had been taken to prevent the recurrence of acts like those mentioned in paragraph 43.

19. Issue (k), as orally amended, was adopted.

Issues (l) to (n)

20. Issues (l) to (n) were adopted.

Issue (o)

21. Mr. LALLAH said the Committee should also ask what special measures of protection under article 24 of the Covenant had been adopted in the specific case of street children.

22. Issue (o), as orally amended, was adopted.

Issue (p)

23. Issue (p) was adopted.

24. Mr. BUERGENTHAL suggested that the first part of issue (p) should be expanded by adding a reference to jurisdiction along the following lines: "Under what circumstances, if any, do military courts have jurisdiction over alleged crimes committed by civilians?".

25. Mr. BRUNI CELLI suggested that a reference to civil crimes committed by members of the armed forces should also be included.

26. The CHAIRMAN said that he would take it that the Committee wished to include an additional issue concerning jurisdiction along the lines proposed by Mr. Buergenthal and Mr. Bruni Celli.

27. It was so decided.

Third periodic report of Peru (CCPR/C/83/Add.1)

28. Ms. EVATT, noting that the Government of Peru had requested that the submission of its third periodic report should be deferred until the fifty-seventh session, suggested that, in the interests of efficiency, the Committee could adopt the list of issues at the current session and make it available to the Government of Peru.

29. Mr. LALLAH, supported by Mr. MAVROMMATIS, Ms. MEDINA QUIROGA, Mr. BRUNI CELLI, Mrs. CHANET, Mr. BHAGWATI and Mr. FRANCIS, said that it would set an unfortunate precedent to provide Peru with the list of issues four months in advance of the presentation of its report before the Committee, thus giving it an unfair advantage over other States parties.

30. Lord COLVILLE said that the Government of Peru should be informed that the Committee reserved the right to amend the draft list of issues before the fifty-seventh session.

31. Ms. EVATT said that providing the State party with the list of issues one session in advance might assist and improve the work of the Committee.

32. Mr. KLEIN said that it was not a matter of preferential treatment but of obtaining the best possible answers to the Committee's questions. In its contacts with the Government of Peru, the Committee should express concern at the last-minute deferral of the report.

33. Mr. POCAR said that the Chairman should send a letter to the Government of Peru emphasizing that the Committee was willing to defer consideration of its report so that the Minister of Justice could be present, and that it looked forward to meeting with a high-level delegation.

34. The CHAIRMAN said that he would proceed as suggested by Lord Colville and Mr. Pocar.

The meeting rose at 3.55 p.m.